

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARIE MOSES and MICHAEL MOSES : CIVIL ACTION
:
v. :
:
SKI SHAWNEE, INC., et al. : NO. 00-3447

M E M O R A N D U M

WALDMAN, J.

July 31, 2000

This is a premises liability action by a husband and wife against business entities which owned or operated a ski resort and two individuals associated with the facility. Plaintiffs seek damages resulting from injuries allegedly sustained by Marie Moses when she tripped and fell on a blacktop surface adjacent to a lodge on the premises. The property is in Monroe County, Pennsylvania. The case was removed to this court on July 7, 2000 from the Court of Common Pleas of Monroe County. Removal jurisdiction is predicated on diversity of citizenship.

The Notice of Removal suffers from substantial deficiencies on its face. A timely motion to remand has been filed.

A case must be removed within thirty days of receipt by a defendant of a copy of the initial pleading or paper setting forth a removable claim. See 28 U.S.C. § 1446(b). The removed claim in the instant case is asserted in a pleading which was filed thirteen months prior to removal and served over eight months prior to removal.

A case is removable only if none of the properly joined and served defendants is a citizen of the forum state. See 28 U.S.C. § 1441(b). All of the defendants are alleged to be citizens of Pennsylvania.

A case may be removed only to a federal court for the district embracing the place where the removed action is pending. See 28 U.S.C. § 1441(a). At the time of removal, this case was pending in a place within the Middle District of Pennsylvania.

Most remarkably, this case was removed by the plaintiffs. The right to remove a case is restricted to defendants. See 28 U.S.C. § 1441(a); Geiger v. Arctco Enters., Inc., 910 F. Supp. 130, 131 (S.D.N.Y. 1996) ("It is clear beyond a peradventure of a doubt that the right of removal is vested exclusively in defendants").

Procedure generally encompasses how, when and where something is to be done and not the existence of a right to do that thing at all. A restriction by Congress on who may bring or remove an action at all would seem to implicate jurisdiction. The Supreme Court has referred to this restriction as jurisdictional. See Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 107 (1941) (restriction to defendants of right of removal "indicat[es] the Congressional purpose to narrow the federal jurisdiction on removal"). See also State of Texas v. Walker, 142 F.3d 813, 816 (5th Cir. 1998) (entertaining and resolving on

merits contention first raised on appeal that district court lacked jurisdiction to adjudicate case because it was removed by counterclaim defendants some of whom were original plaintiffs). At the least, this is another glaring procedural defect for which defendants properly seek a remand.

Defendants also fairly note that in plaintiffs' verified complaint, they aver that their claim is for an amount "not in excess of Fifty Thousand (\$50,000) Dollars." In the notice of removal, plaintiffs assert that "[t]he amount in controversy exceeds \$75,000." This would at least warrant some explanation if the case were not otherwise plainly subject to remand for the other defects noted.

Defendants also ask for an award of costs and attorney fees incurred by reason of the removal as authorized by 28 U.S.C. § 1447(c) when removal is found to be improper. If such an award is not warranted in this case, it is difficult to discern when it would be. A finding of bad faith or improper purpose is not required for the imposition of costs or fees. See Mints v. Educational Testing Service, 99 F.3d 1253, 1260 (3d Cir. 1996); Moore v. Permanent Medical Group, Inc., 981 F.2d 443, 446 (9th Cir. 1992); Morgan Guar. Trust v. Republic of Palau, 971 F.2d 917, 923 (2d Cir. 1992); Eyal Lior v. Sit, 913 F. Supp. 868, 878 (D.N.J. 1996).

In removing this case, plaintiffs' counsel patently ignored virtually every requirement for removal imposed by Congress and thereby put defendants to some effort and expense. There is no justification for a removal in the circumstances. The removal was clearly improper and such impropriety was evident from a mere reading of the removal statute. Because the deficiencies reflect solely a disregard of applicable law, any award of costs or fees should be borne by counsel.

It is abundantly clear that this case must be remanded and its progress in state court should not be further impeded. The court will thus not wait to resolve the request for costs and fees before remanding this case. The court retains jurisdiction after remand to adjudicate the request for costs and fees. See Stallworth v. Greater Cleveland Reg. Transit Auth., 105 F.3d 252, 257 (6th Cir. 1997); Mints, 99 F.3d at 1257-58.

An order will be entered granting defendants' Motion for Remand. An order will also be entered setting a schedule for briefs and submissions in connection with defendants' request for costs and fees.

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O R D E R

AND NOW, this day of July, 2000, consistent
with the accompanying memorandum of this date, **IT IS HEREBY**
ORDERED that defendants' Motion for Remand is **GRANTED** and,
pursuant to 28 U.S.C. § 1447(c), the above action is **REMANDED** to
the Court of Common Pleas of Monroe County.

BY THE COURT:

JAY C. WALDMAN, J.

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AND NOW, this day of July, 2000, consistent
with the accompanying memorandum of this date, **IT IS HEREBY**
ORDERED that defendants' shall have until August 7, 2000 to
specify and verify the costs and attorney fees requested as
allegedly incurred as a result of plaintiffs' improper removal of
this case; and, plaintiffs' counsel shall have until August 11,
2000 to show why the award of such costs and fees or any portion
thereof would not be just and reasonable, or otherwise to respond
to defendants' request.

BY THE COURT:

JAY C. WALDMAN, J.